THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.2088 of 2005

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%25.04.2005

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Smt. T. Naga Malleshwari, and another

…Petitioners

Vs.

$ 1The Mandal Revenue Officer, Mangalagiri, Guntur District., and others.

….Respondents

Counsel for the Petitioner: MR.B.CHINNAPA REDDY
Counsel for the Respondents 1 and 2: GP FOR REVENUE

Counsel for the Respondent No.3: V.PADMANABHA RAO

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- Head Note:

? Cases referred:

2001 (1) ALD (Crl.) 231 (AP)

1996 (4) ALD 807 (D.B.)

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 2088 of 2005

Between:

1 Smt. T. Naga Malleshwari, W/o. Late Subba Rao,
R/o. 5-178/A,19, 5th ward, Mangalagiri, Guntur District.
2 Smt. Thota lakshmi Tulasi, W/o. Nageswara Rao,
r/o. 5-178/A-2, 5th Ward, Mangalagiri, Guntur District.

….. PETITIONERS

AND

1 The Mandal Revenue Officer, Mangalagiri, Guntur District.
2 The S.H.O., Mangalagiri Town P.S., Guntur District.
3 The District Collector, Guntur District, Guantur.
4 Bollavarpu Tarabai W/o. Suguna Rao
R/o. Quarter No. S1 A/28, 6th BNAPSP, Mangalagiri,
Guntur District.
(R4 is impleaded as per court order dt. 21-4-2005 in
WPMP 6898 of 2005)

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to Issue a writ order or direction, more particularly one in the nature of writ of Mandamus declaring the orders of the 1st respondent issued through proceedings Rc.No.415/2004/C, dt. 22.12.2004 as illegal, arbitrary, unconstitutional and against to the principles of natural justice.

Counsel for the Petitioner: MR.B.CHINNAPA REDDY

Counsel for the Respondents 1 and 2: GP FOR REVENUE

Counsel for the Respondent No.3: V.PADMANABHA RAO

The Court, at the admission stage, made the following:

ORDER:

Order dated 22-12-2004 in Rc.No.415/2004/C passed by the first respondent under Section 133 Cr.P.C is challenged in this petition.

The main contention of the learned counsel for the petitioners is that since the first respondent is not specially empowered by the State Government to pass an order under Section 133 Cr.P.C., the impugned order is liable to be set aside. It is also his contention that since the site, in respect of which the first respondent passed the order, is not a thorough fare or road, but is a private property belonging to the petitioners and since the petitioners were not afforded an opportunity of being heard and since no enquiry whatsoever was conducted by the first respondent, the impugned order is liable to be set aside.

The contention of the learned Government Pleader is that since the petitioners have an effective alternative remedy of revision under Section 397 Cr.P.C., this petition is not maintainable.

The contention of the learned Government pleader is that the site, in respect of which the order is passed, is a Government Poramboku land and in fact, the petitioners have constructed a wall, preventing the entry of the fourth respondent into his house with an intention to drive him away from that locality and knock away his property at a cheap rate, and since petitioners did not specifically raise a plea in his affidavit that first respondent was not specially empowered to pass an order under Section 133 Cr.P.C., it cannot now be contended that first respondent was not empowered by the State Government to pass an order under Section 133 Cr.P.C. In reply, the contention of the learned counsel for the petitioners is that since authority of first respondent to pass order under Section 133 Cr.P.C. a legal plea, the fact that petitioners did not specifically state in his affidavit that first respondent is not empowered by the Government to pass order under Section 133 Cr.P.C. is of no

consequence.

The contention of the learned counsel for the petitioners that question relating to Government empowering first respondent to pass order under Section 133 Cr.P.C. is a question of law, in my considered opinion, is not correct. Question whether an officer is vested with a power, which can be exercised only on specific empowerment, or not is a question of fact only, but not a question of law. But question whether a person who is factually not empowered, can pass order or not would be a question of law.

Petitioner, admittedly, did not take a plea that first respondent is not specially empowered by the Government to pass order under Section 133, for the respondents either admitting or denying that fact.

As per Section 133 Cr.P.C. every District Magistrate and
Sub-divisional Magistrate have power to pass an order under that Section. For any other Executive Magistrate to pass an order under that Section, he should be specially empowered by the State Government to pass orders under that Section.
In **SRI AYYAPPA STOINE CRUSHER, KUNTRAPAKAM v. MRO, TIRUPATHI ,** also a learned Judge took the same view. How proceeding under Sections 133 and 138 Cr.P.C. can be initiated is laid down in **KRANTI PARCEL SERVICE v. STATE ,** relied on by the learned counsel for the petitioners.

If really first respondent is not specifically empowered by the Government to pass an order under Section 133 Cr.P.C., petitioner need not feel aggrieved at all, because as per
Section 461 Cr.P.C., any order passed by a Magistrate under Section 133 Cr.P.C., not empowered to pass such order would be void, and since it is well known that void orders are as good or bad as NON EST orders.

I do not wish to go into the merits of the other contentions raised by the learned

counsel for the parties, because the petitioners have not explained the reasons for their not invoking the very effective remedy of Revision available to them, because as per Section 397 Cr.P.C. all Magistrates, whether Executive or Judicial and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of Sections 397 and 398 Cr.P.C., and so the order passed by the first respondent, impugned in this petition, can be subjected to a Revision under Cr.P.C.

For that reason alone, the petition is liable to be and hence is dismissed granting liberty to the petitioners to pursue the remedy of Revision available to them under Cr.P.C. Status quo as on today will be maintained for one week from today by both the parties.

The writ petition is disposed of accordingly. No costs.

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(C.Y.SOMAYAJULU, J)

Dated April 25, 2005.

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Note

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To

One fair copy to the Honourable Sri Justice C.Y.Somayajulu (for his Lordships kind perusal)

1 The Mandal Revenue Officer, Mangalagiri, Guntur District.
2 The S.H.O., Mangalagiri Town P.S., Guntur District.
3 The District Collector, Guntur District, Guantur.
4. 2 CCs to G.P. for Revenue, High court Buildings,
Hyderabd (OUT)

5. 8 L.R. Copies.

6. The Under Secretary, Union of India, Ministry of Law, Justice and Company

Affairs, New Delhi.

7. The Secretary, A.P.Advocates Association, Library, High Court Buildings,

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